

AGREEMENT AND RELEASE

This Agreement and Release (“Agreement”) is entered into on the date of signature of the last signatory to this Agreement (“Effective Date”) by and between Speech First, Inc. on the one hand and Virginia Polytechnic Institute and State University (“University”) on the other (together, the “Parties”), as follows:

A. WHEREAS, by Complaint filed on April 8, 2021, Speech First brought the matter styled *Speech First, Inc. v. Sands*, No. 7:21-cv-00203 (W.D. Va.) (“Action”) asserting claims against Timothy Sands, in his individual capacity and official capacity as President of Virginia Polytechnic Institute and State University; Cyril Clarke, in his individual capacity and official capacity as Executive Vice President and Provost; Kelly Oaks, in her individual capacity and official capacity as Assistant Vice President for Equity and Accessibility; Byron Hughes, in his individual capacity and official capacity as Dean of Students; Ennis McCreary, in her individual capacity and official capacity as Director of the Office of Student Conduct; Scott Midkiff, in his individual capacity and official capacity as Chief Information Officer and Vice President for Information Technology; Kim O’Rourke, in her individual capacity and official capacity as Vice President for Policy and Governance; and Horacio Valeiras, Letitia Long, Edward Baine, Shelley Butler Barlow, Carrie Chenery, Greta Harris, Charles Hill, Melissa Byrne Nelson, Chris Peterson, Mehul Sanghani, Jeff Veatch, and Preston White, all in their individual capacities and official capacities as members of the Virginia Polytechnic Institute and State University Board of Visitors (all of the foregoing being “Defendants”);

B. WHEREAS, on April 12, 2021, Speech First moved for a preliminary injunction against the University’s “**discriminatory harassment policy**” (Virginia Tech Policy 1025); the University’s computer policy concerning “intimidat[ing], harass[ing],” or “annoy[ing]” messages (Virginia Tech Policy 7000) (the “**computer policy**”) and the University’s policy, incorporated by Policy 7000, concerning the use of the University network for “partisan political purposes” (the “**acceptable use policy**”); the University’s policy on “informational activities” (Virginia Tech Policy 5215); and the University’s “**bias-related incidents protocol**,” as then implemented by the Bias Intervention and Response Team (“BIRT”), *see* Doc. 4;

C. WHEREAS, on April 21, 2021, Speech First and Defendants filed a stipulated dismissal of Speech First’s claims against all Defendants other than Sands, *see* Doc. 7;

D. WHEREAS, on April 21, 2021, Speech First and Defendants further stipulated that any injunctive or declaratory relief or attorney’s fees awarded in this action to Speech First against Sands would apply to and be binding on Virginia Polytechnic Institute and State University, *see* Doc. 7;

E. WHEREAS, on May 17, 2023, the University amended the acceptable use policy’s prohibition on the use of the University network “for partisan political purposes” to apply only to employees rather than nonemployee students, *see* <https://perma.cc/3JGV-UA27>. The University states that this amendment coincides with its actual practice before the lawsuit was filed; Speech First takes no position on that representation. The University’s Board of Visitors adopted a formal resolution confirming this amendment on June 8, 2021. Further, the University has asserted

repeatedly that it has no intention of reverting back to the prior policy and it considers this change permanent;

F. WHEREAS, on May 21, 2021, Defendants responded in opposition to Speech First's motion for preliminary injunction, *see* Doc. 15;

G. WHEREAS, on September 22, 2021, the United States District Court for the Western District of Virginia ("District Court") granted Speech First's preliminary injunction motion in part and denied it in part, with the motion being granted with respect to the computer policy, and denied with respect to the discriminatory harassment policy, informational activities policy, and bias-related incidents protocol; and denied with respect to the acceptable use policy, which the District Court held to be "moot," *see* Doc. 36;

H. WHEREAS, on September 24, 2021, Speech First timely appealed the District Court's partial denial of Speech First's motion for preliminary injunction as to the bias-related incidents protocol and informational activities policy, *see* Doc. 38;

I. WHEREAS, the University did not appeal the preliminary injunction against the computer policy issued by the District Court;

J. WHEREAS, on May 31, 2023, the United States Court of Appeals for the Fourth Circuit affirmed the District Court's judgment, *see* Judgment, No. 21-2061 (4th Cir. May 31, 2023); *see also* Docs. 44, 45;

K. WHEREAS, on August 14, 2023, Speech First filed a Petition for Writ of Certiorari to the Supreme Court of the United States, seeking review of the Fourth Circuit's ruling regarding the bias-related incidents protocol. Speech First's Petition did not ask the Supreme Court to review the informational activities policy;

L. WHEREAS, on October 12, 2023, the University filed a brief in response to Speech First's petition for certiorari, accompanied by a Declaration from Timothy Sands stating, among other things, that the University had discontinued its bias-related incidents protocol and disbanded the BIRT in June 2023 and that it "shall not (a) re-instate the now-discontinued bias-incident response protocol or BIRT, or (b) adopt or implement any protocol or policy that encourages (or requires) anyone to report to University authorities any instances of student speech based on the content or viewpoint of that speech" but "retain[ing] the option to implement such policies as may be appropriate to address acts of misconduct, such as violations of criminal law (including true threats); violations of University rules regarding harassment, discrimination, and sexual misconduct, and violations of First Amendment rights";

M. WHEREAS, on March 4, 2024, the Supreme Court granted Speech First's Petition and ordered that "[t]he judgment with respect to the Bias Policy claims is VACATED, and the case is remanded to the United States Court of Appeals for the Fourth Circuit with instructions to dismiss those claims as moot";

N. WHEREAS, the Parties have determined that it is in their mutual interests to amicably resolve the issues between them regarding the discriminatory harassment policy, the

computer policy, the acceptable use policy, the informational activities policy, and the bias related incidents protocol;

NOW, THEREFORE, in consideration of the foregoing and of the mutual undertakings of the Parties set out herein, the Parties agree as follows:

1. With respect to the **discriminatory harassment policy** (Virginia Tech Policy 1025), Speech First will dismiss its claims *with prejudice*, because the discriminatory harassment policy is not a policy under which nonemployee students are sanctioned.

2. With respect to the **acceptable use policy**, Speech First will dismiss its claims *with prejudice*. The version of the acceptable use policy that Speech First challenged in this Action that forbids nonemployee students from using the University network “for partisan political purposes” will not be reinstated.

3. With respect to the **informational activities policy** (Virginia Tech Policy 5215), Speech First will dismiss its claim *with prejudice*. Recognized student organizations can reserve University-designated spaces to conduct informational activities on campus without regard to the content discussed or viewpoints presented by the participants. Doc. 15 at 30-31; Doc. 15-4 at 20-21. The University reserves the right to impose reasonable time, place and manner requirements and to allocate space in a manner that prevents monopolization and prevents interference with the First Amendment rights of others.

4. With respect to the **computer policy** (Virginia Tech Policy 7000), Speech First will dismiss its claims *with prejudice*, which dismissal will vacate the preliminary injunction against the computer policy. The University will not reinstate the version of the computer policy that Speech First challenged in the Action.

5. With respect to the **bias incident response protocol and BIRT**, given the U.S. Supreme Court’s Order dated March 4, 2024, as well as the Declaration from President Timothy Sands filed on October 12, 2023, Speech First will dismiss its claims relating to BIRT and the bias-related incidents protocol *as moot*.

6. The University will pay Speech First the amount of Twenty Thousand Dollars (\$20,000.00) (“Settlement Proceeds”) in satisfaction of any and all disputed sums claimed, due, arising from, or in any way relating to the Action. The Settlement Proceeds shall be paid by the University to Speech First within three (3) business days of Speech First’s filing of the Joint Stipulation of Dismissal attached as Exhibit A to this Agreement.

7. For and in consideration of the University’s undertakings set forth in paragraphs 2, 3, 4, and 5, and the Settlement Proceeds set forth above in paragraph 6, the sufficiency of which is hereby acknowledged, and intending to be legally bound, Speech First does hereby remise, release, and forever discharge and completely and absolutely release the University and Defendants (collectively, the “Released Parties”) from the claims, causes of action, and requests for relief that were brought or could have been brought to challenge the discriminatory harassment policy, the acceptable use policy, the informational activities policy, and computer policy in the Action. The Released Parties are each entitled to enforce this Agreement against Speech First without regard for whether the Released Party is a party to this Agreement. Nothing contained

herein shall be construed to release any of the Released Parties from any claim that Speech First or its members might have as the result of any materially different policy or practice that the University may adopt in the future with respect to the subjects of the discriminatory harassment policy, the acceptable use policy, the informational activities policies, or the computer policy.

8. Within three (3) business days of the Effective Date, Speech First will file a Joint Stipulation of Dismissal in the form attached as Exhibit A to this Agreement.

9. Each side shall bear their own attorneys' fees, costs, and expenses.

10. Nothing contained in this Agreement shall be deemed as an admission of any liability or lack of merit in any claim or defense by any Party.

11. This Agreement represents the full and complete agreement between the Parties to resolve their dispute regarding the policies challenged in the Action. Any representations, warranties, promises, or conditions, whether written or oral, not specifically incorporated into this Agreement shall not be binding on the Parties. All other discussions, negotiations, and writings have been and are merged into this Agreement.

12. Neither this Agreement nor any terms or provision hereof may be changed, waived, discharged, or terminated except by an instrument in writing duly signed by the Party against which enforcement of the change, waiver, discharge, or termination is sought.

13. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia applicable to contracts made and to be performed wholly within the Commonwealth of Virginia, without regard to its conflict-of-laws provisions. All Parties agree that this Agreement and any disputes arising therefrom arise out of the same transaction or occurrence that is the subject matter of the Action and further agree that any disputes with respect to this Agreement are properly heard by the District Court in the Action.

14. The Parties agree that, in the event of any ambiguity or dispute regarding the interpretation of this Agreement, the Agreement will be interpreted as if each Party participated equally in its drafting.

15. The Parties represent, knowing that all other Parties will rely on such representation, that each signatory has the right, power, and authority to: (i) sign this Agreement and Release; (ii) bind itself to the terms of this Agreement and Release; (iii) with respect to Speech First, to so bind its members, successors, and assigns; and (iv) to receive the consideration set forth in this Agreement and Release.

16. This Agreement can be signed in two original counterparts, each of which shall for all purposes be considered an original of this Agreement. Execution and delivery of this Agreement by electronic means (including via e-mail or .pdf) shall be sufficient for all purposes and shall be binding on any person or Party who so executes.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Date: 4/9/24

SPEECH FIRST, INC.

By: 

Date: 4/2/24

VIRGINIA POLYTECHNIC INSTITUTE AND
STATE UNIVERSITY

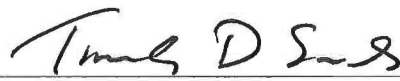
By: 

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

SPEECH FIRST, INC.,

Plaintiff,

v.

Case No. 7:21-cv-00203

TIMOTHY SANDS, in his official capacity as
President of Virginia Polytechnic Institute and
State University,

Defendant.

JOINT STIPULATION OF DISMISSAL

Per Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiff and Defendant (collectively, the “Parties”) jointly stipulate as follows: The Supreme Court of the United States has ordered that the bias incident response protocol and bias incident response team claims be dismissed as moot. The Parties jointly stipulate to the dismissal of Counts V and VI of the complaint (bias-related incidents protocol) as moot, and Counts I, II, III, IV, and VII of the complaint (discriminatory-harassment policy, computer policy, acceptable use policy, and informational activities policy) with prejudice. Each side will bear its own attorneys’ fees, costs, and expenses.

Dated: March 15, 2024

/s/ Jessica A. Glajch

Matthew B. Kirsner
William H. Hurd
ECKERT SEAMANS CHERIN
& MELLOTT, LLC
Suite 1300
919 East Main Street
Richmond, VA 23219
Tel: (804) 788-7744/9638
Fax: (804) 698-2950
Email: mkirsner@eckertseamans.com
whurd@eckertseamans.com

Michael McAuliffe Miller
Renee Mattei Myers
ECKERT SEAMANS CHERIN
& MELLOTT, LLC
8th Floor
1 South Market Square Building
213 Market Street
Harrisburg, PA 17101
Tel: (717) 237-7174/7163
Fax: (717) 237-6019
Email: mmiller@eckertseamans.com
rmyers@eckertseamans.com

Jessica A. Glajch
ECKERT SEAMANS CHERIN
& MELLOTT, LLC
1717 Pennsylvania Avenue, NW Suite 1200
Washington, D.C. 20006
Tel: (202) 659-6672
Fax: (202) 659-6699

Counsel for Defendant Timothy Sands

Respectfully submitted,

/s/ Cameron T. Norris

J. Michael Connolly (*pro hac vice*)
Cameron T. Norris (*pro hac vice*)
James F. Hasson (*pro hac vice*)
Thomas S. Vaseliou (*pro hac vice*)
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Suite 700
Arlington, VA 22209
(703) 243-9423
cam@consovoymccarthy.com

Counsel for Plaintiff Speech First, Inc.